

Remarks

The Office Action of September 23, 2005, rejected all of the claims as being directed to an invention that was anticipated by or obvious from the disclosure of U. S. Patent 6,157,808 to Hollingsworth.

The fundamental problem with the Hollingsworth reference is the fact that it does not teach or disclose a measurable performance and a separately measurable skill. Recall the example of the football wide receiver. The measured performance is touchdown catches per game. The measured skill is speed. Does increasing the wide receiver's speed increase his touchdown catching ability? Plausibly, yes. Do we know that reliably? No.

Hollingsworth solely deals with the measurement of skills or tasks. To the extent that any conclusions about an employee's job performance are made, they are derived from measurements of the task or skills, not separately measured. Applying Hollingsworth to our wide receiver, we would test his speed in the 40 yard dash; any increase in speed would be said to make him a better wide receiver, never looking at his touchdown catches. Page 3 of the Office Action said Hollingsworth discloses defining a role having a measurable performance and a separately measurable skill in which an improvement of a skill at least plausibly measured improves the performance at column 3, line 65 through column 4, line 5 and column 5, lines 26-42 and lines 60-62. Nothing in that those passages talk about a measurable performance. There are conclusory statements about performance, but they are all derived from measurements of the employee's mastery of a skill or tasks. There is nothing in Hollingsworth that teaches measuring the performance separately from measuring the skill.

At the top of page 4, the Office Action refers to Hollingsworth Job Performance Measure (JPM) as maintaining a job performance measure for each employee. However, the job performance table does not separately measure performances. It is only a collection of skills or assessments of the employee's ability to function at higher cognitive, psychomotor or affective level. See column 9, lines 49-52. There is no mention of measuring a job performance separately from any of these elements.

The Hollingsworth reference from time to time refers to "enabling objectives," but those are not the separately measurable job performance of applicant's invention. The enabling objectives are described by Hollingsworth as specific skills or hybridized skill statements (see columns 6, line 66 through column 7, line 1). Again, these are derived from skill measurements, not separately measured.

Hollingsworth also refers to "certifications," but those are nothing more than a representation of collected skills that comprise the skill sets that are considered to be important for a successful job performance. See column 7, lines 20-22. There is nothing in Hollingsworth that discloses testing the assumption that the skills are important to successful job performance.

Since Hollingsworth never separately measures performance, the remainder of claim 31 cannot be read on (or near) Hollingsworth:

Claim 31 recites "before the occurrence of an event that may increase a skill level of the individual, measuring the individual's skill to determine a skill level and measuring the individual's performance as a first actual performance metric." Hollingsworth never suggests such a thing.

"After the occurrence of an event, assessing the individual's performance as a second actual performance metric" is also claimed, but Hollingsworth does not measure the performance as defined in applicant's claim, after an event.

"Analyzing a relationship between the first and second actual performance metrics and the skill of the individual before and after the event occurrence on a computer." How can this be said to be disclosed or suggested, when Hollingsworth never measures performance metrics separately from skills? There claimed measurements are not available in Hollingsworth so that any relationship between them can be analyzed.

"Determining whether the event occurrence increased the performance of the individual based at least partially on the relationship between the first and second actual performance metrics and the skill of the individual." This is way beyond where Hollingsworth takes the art.

Accordingly, it is believed that the Hollingsworth reference is, contrary to the position asserted in the Office Action, not anticipatory of applicant's claims. Nor does it suggest or provide a motivation to make the invention applicant has claimed.

The rejections of claims 8 and 9 as being directed to an invention that would have been obvious from the Hollingsworth patent is even more far afield. The Office Action acknowledges that Hollingsworth does not disclose measuring first and second actual performance metrics of individuals where one individual is subject to training and another is not. Yet, apparently guided by hindsight from applicant's disclosure, the Office Action asserts that it would have been obvious to do so.... and then follow this non-disclosed and unsuggested step with a further unsuggested step of comparing the first and second actual performance metric of the second individual with a first and second actual performance metrics of the individual to determine the effectiveness of the training of that on the actual skill level.

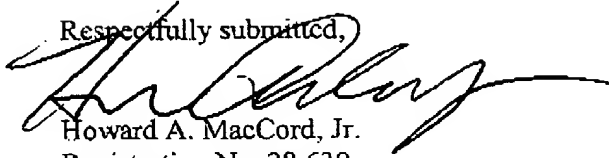
Perhaps the error of the Office Action is most clearly shown in the statement "[f]urthermore, since the exams are designed to specifically assess employee skill levels (column 12, lines 6-9), comparing exam results between trained and non-trained employees would provide very targeted information relating to the effectiveness of the training and thus, aid in the improvement/enhancement of the training provided to employees..." Applicant is claiming a system in which the measurable performance and separately measurable skill are measured. By merely reiterating that comparison of the skills of two people is made, the Office Action highlights the fact that overall performance -- a separately measured performance -- is not in Hollingsworth.

The explanation of the rejection of claim 9 again acknowledges that measuring the performance metric is foreign to Hollingsworth. The reference to Hollingsworth's disclosure of maintaining information related to the performance of tasks, such as duty area, activity type, procedures, standards, etc. is not anything close to the performance metrics of applicant's claims. Perhaps guided by hindsight, one might use some of the collected information of the Hollingsworth system in a system such as applicant's, but Hollingsworth itself does not do that -- nor does he suggest doing that.

Accordingly, it is believed that the claims now clearly define over the Hollingsworth reference and the case is now in condition for allowance. Should the examiner have any further

small matters requiring resolution, she is encouraged to telephone the undersigned for expeditious handling.

Respectfully submitted,



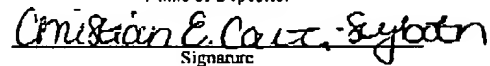
Howard A. MacCord, Jr.
Registration No. 28,639
MacCord Mason PLLC
P. O. Box 2974
Greensboro, NC 27402
(336) 273-4422

Date: December 20, 2005
File No. 7438-001

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS DOCUMENT IS
BEING FACSIMILE TRANSMITTED TO THE
PATENT AND TRADEMARK OFFICE (FAX NO.
(571) 273-8300) TO: EXAMINER C. Michelle Colon,
ART UNIT 3623. ON December 20, 2005
(Date of Deposit)

Christian E. Carter-Seyboth
Name of Depositor


Signature